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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/727,124	11/30/2000	Victor L. Vines	108747.00003	2389

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EXAMINER

NGUYEN, VI X

ART UNIT PAPER NUMBER

3731

10

DATE MAILED: 07/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/727,124

Applicant(s)

VINES, VICTOR L.

Examiner

Victor X Nguyen

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 19 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 10-20 is/are rejected.
- 7) ☒ Claim(s) 8 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Continued Prosecution Application*

1. Receipt is acknowledged of the "conditional" request for a Continued Prosecution Application (CPA) filed on 6/19/2003 based on prior Application No. 09727124. Any "conditional" request for a RCE submitted as a separate paper is treated as an unconditional request for a RCE. Accordingly, the request for a RCE application is acceptable and a RCE has been established. An action on the RCE follows.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5 are rejected under 35 U.S.C. 102 (e) as being anticipated by Dimitriu et al (U.S.6,361,542).

Regarding claim 1, Dimitriu discloses a device for enabling the recording of a pressure produced by a vacuum device (Figs1-3), having: a cable (44) is attached to a monitor (42). The monitor (42) is enabled to record a detected pressure; and a pressure detection device (40) coupled to the cable (44). The pressure detection device (40) is coupled to a tubing (12) such that the pressure detection device (40) is enabled to detect a pressure in the tubing (12); and

Art Unit: 3731

wherein the tubing (12) coupled to a suction device (10), the suction device attaches to a fetus (40)

Regarding claims 2,3, Dimitriu discloses the device wherein the tubing (Figs 1,2,3) has a first end and a second end; furthermore, the first end and the second end are enabled to couple to the tubing (12).

Regarding claim 4, Dimitriu discloses the device wherein the first end is enabled to attach to a vacuum pump (10).

Regarding claim 5, Dimitriu discloses the device wherein the first end is enabled to attach to a suction device (10).

Claims 6, 7 and 10-12 are rejected under 35 U.S.C. 102 (e) as being anticipated by Dimitriu (U.S.6,361,542).

Regarding claim 6, Dimitriu discloses a method of using a recording device to record a pressure in a vacuum device (Figs1-3), having: the vacuum device (10) on a fetus (40); wherein coupling the recording device to the vacuum device (10) and recording the pressure to produce a record (col. 2, lines 40-67).

Regarding claim 7, Dimitriu discloses the method comprising the act of calibrating the recording device by zeroing the pressure .

Regarding claims 10, 11, 12, Dimitriu discloses the method wherein the recording is achieved electronically and with a paper printout; furthermore, comprising the act of storing the record (col 2, lines40-67).

Claims 13-20 are rejected under 35 U.S.C. 102 (b) as being anticipated by Hariri et al (U.S.4,875,482).

Art Unit: 3731

Regarding claim 13, Hariri et al discloses a pump-attachable device for monitoring and recording a pressure in a vacuum device (Figs 4,5), having: an adapter (55 is considered an adapter) attached to a pressure gauge (fig 4) receiver of a hand pump (76); wherein the hand pump couples to a vacuum extraction device (labeled in col. 8, lines 9-13) which has a suction device coupled thereto; and wherein an air pressure detector (labeled in col. 8 lines 5-13) secures in the adapter (55) such that the pressure detector is exposed to an air cavity in the hand pump (76); and a cable (78) coupled to the air pressure detector, the cable (78) enabled to attach to a monitor (not label) for recording a detected pressure.

Regarding claim 14, Hariri et al discloses the pump-attachable device wherein the air pressure detector (col. 8 lines 5-13) is a transducer.

Regarding claims 15, 16, 19, Hariri et al discloses the pump-attachable device; wherein the monitor (not label) is coupled to the cable (78) and the monitor is enabled to display a detected pressure; furthermore, the monitor is enabled to generate a paper record.

Regarding claims 17, 18, Hariri et al discloses the pump-attachable device ; wherein the air pressure detector (col. 8 lines 5-13) generates a mechanical signal based on the pressure and generates an electrical signal based on the pressure.

Regarding claim 20, Hariri et al discloses the pump-attachable device having a pressure release valve (55) coupled to the hand pump (76).

***Allowable Subject Matter***

3. Claim 8 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The following is a statement of reasons for the indication of allowable

Art Unit: 3731

subject matter: None of the prior art of record disclose or suggest a grip surface of the handle and the activation surface of the vacuum pump are in a proximity such that a single human hand can grasp both the grip and the activation surface simultaneously; and wherein compression of the activation surface of the vacuum pump towards the grip surface of the handle reduces the volume within the vacuum chamber.

***Response to Arguments***

4. Applicant's arguments filed 6/19/2003 have been fully considered but they are not persuasive.

Regarding applicant's argument to rejection of claim 1, the obstetric device of Dimitriu is capable of detecting, monitoring, and storing the pressure in the fetal extration cup. In response to applicant's argument that Dimitriu does not have a pressure detection element, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Regarding applicant's amendment to claim 13, the obstetric device of Hariri includes a vacuum extraction device which does have a suction device coupled therefo (labeled in col. 8, lines 9-13). Since Hariri discloses a vacumm extraction device which has a suction device, Therefore, the claimed invention is not patentable over Hariri's device.

Art Unit: 3731

*Conclusion*


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X Nguyen whose telephone number is (703) 305-4898. The examiner can normally be reached on M-F (8-4.30 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Milano can be reached on (703) 308-2496. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Victor X Nguyen  
Examiner  
Art Unit 3731

vn  
June 30, 2003

  
KEVIN T. TRUONG  
PRIMARY EXAMINER  
6/30/03